

SENATE BILL

No. 4

Introduced by Senator Ashburn

(Principal coauthor: Senator Calderon)

(Principal coauthor: Assembly Member Jeffries)

**(Coauthors: Senators Aanestad, Cogdill, Dutton, Hollingsworth,
Huff, and Padilla)**

(Coauthors: Assembly Members Portantino, Solorio, and Tran)

February 22, 2010

An act to add and repeal Section 17059.1 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 4, as introduced, Ashburn. Income tax credit: qualified principal residence.

The Personal Income Tax Law authorizes various credits against the taxes imposed by that law, including a credit against those taxes in an amount equal to the lesser of 5% of the purchase price of a qualified principal residence, as defined, or \$10,000, for purchases made between March 1, 2009, and before March 1, 2010, subject to specified restrictions.

This bill would authorize a credit against those taxes in an amount equal to the lesser of 5% of the purchase price of a qualified principal residence, as defined, or \$10,000, for purchases made between May 1, 2010, and on or before December 31, 2010, or on or after December 31, 2010, and before August 1, 2011, subject to specified restrictions, including the submission of a certification to the Franchise Tax Board by either the taxpayer or seller, made under the penalty of perjury, that

the residence has either never been occupied or that the taxpayer is a first-time home buyer.

By expanding the definition of an existing crime, this bill imposes a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17059.1 is added to the Revenue and
2 Taxation Code, to read:

3 17059.1. (a) (1) In the case of any taxpayer who purchases a
4 qualified principal residence on and after May 1, 2010, and on or
5 before December 31, 2010, or any taxpayer who purchases a
6 qualified principal residence on and after December 31, 2010, and
7 before August 1, 2011, pursuant to an enforceable contract executed
8 on or before December 31, 2010, there shall be allowed as a credit
9 against the “net tax,” as defined in Section 17039, an amount equal
10 to the lesser of 5 percent of the purchase price of the qualified
11 principal residence or ten thousand dollars (\$10,000).

12 (2) The amount of any credit allowed under paragraph (1) shall
13 be applied in equal amounts over the three successive taxable years
14 beginning with the taxable year in which the purchase of the
15 qualified principal residence is made.

16 (3) The credit under this section shall be allowed for the
17 purchase of only one qualified principal residence with respect to
18 any taxpayer.

19 (4) A qualified principal residence is purchased on the date on
20 which escrow closes with respect to the purchase of the qualified
21 principal residence.

22 (b) For purposes of this section:

23 (1) “Qualified principal residence” means a single-family
24 residence, whether detached or attached, that is purchased to be
25 the principal residence of the taxpayer, is eligible for the

1 homeowner's exemption under Section 218, and has either never
2 been occupied or is purchased by a first-time home buyer.

3 (2) "First-time home buyer" means any individual, or
4 individual's spouse, who had no present ownership interest in a
5 principal residence during the preceding three-year period ending
6 on the date of the purchase of the qualified principal residence.

7 (c) (1) (A) A taxpayer may, but is not required to, reserve a
8 credit prior to close of escrow for the purchase of a qualified
9 principal residence that has never been occupied. To reserve a
10 credit, the taxpayer and seller shall jointly sign and submit to the
11 Franchise Tax Board a certification that they have entered into an
12 enforceable contract on or after May 1, 2010, and on or before
13 December 31, 2010. Upon receipt of the joint certification, the
14 Franchise Tax Board shall notify the taxpayer that the board has
15 reserved the credit for the taxpayer, pending receipt, within two
16 weeks after the close of escrow, of the information required under
17 paragraph (2) for a qualified principal residence that has never
18 been occupied.

19 (B) The reservation of a credit shall be canceled if a taxpayer
20 does not provide either the information required under paragraph
21 (2) or a notification of cancellation before August 16, 2011.

22 (2) No credit shall be allowed under this section unless the
23 taxpayer submits to the Franchise Tax Board, within two weeks
24 after the date of the purchase of the qualified principal residence,
25 a copy of the properly executed settlement statement and either
26 one of the following:

27 (A) If the qualified principal residence has never been occupied,
28 a certification by the seller, made under penalty of perjury, that
29 the residence has never been previously occupied.

30 (B) If the qualified principal residence is purchased by a
31 taxpayer who is a first-time home buyer, a certification from the
32 taxpayer, made under penalty of perjury, that he or she is a
33 first-time home buyer.

34 (d) If the taxpayer does not occupy the qualified principal
35 residence as his or her principal residence for at least two years
36 immediately following the purchase, any remaining unapplied
37 credit shall be canceled and any previously applied credit shall be
38 recaptured, and the taxpayer shall be liable for any increase in tax
39 attributable to the recapture of any credit previously allowed under
40 this section.

1 (e) (1) In the case of two married taxpayers filing separately,
2 the credit allowed under subdivision (a) shall be equally
3 apportioned between the two taxpayers.

4 (2) If two or more taxpayers who are not married purchase a
5 qualified principal residence, the amount of the credit allowed
6 under subdivision (a) shall be allocated among the taxpayers in
7 the same manner as each taxpayer's percentage of ownership,
8 except that the total amount of the credits allowed to all of these
9 taxpayers shall not exceed ten thousand dollars (\$10,000).

10 (f) (1) The total amount of credit that may be allocated pursuant
11 to this section shall not exceed one hundred million dollars
12 (\$100,000,000) for the purchase of qualified principal residences
13 that have never been occupied and one hundred million dollars
14 (\$100,000,000) for the purchase of a qualified principal residence
15 by first-time home buyers.

16 (A) For each certification or reservation received from a
17 taxpayer for the purchase of a qualified principal residence that
18 has never been occupied, the total amount of credit available for
19 allocation shall be reduced by an amount equal to 70 percent of
20 the amount of the credit for the purchase of a qualified principal
21 residence that has never been occupied.

22 (B) For each certification received from a taxpayer for the
23 purchase of a qualified principal residence by a first-time home
24 buyer, the total amount of credit available for allocation shall be
25 reduced by an amount equal to 57 percent of the amount of the
26 credit for the purchase of a qualified principal residence by a
27 first-time home buyer.

28 (2) Once the credits allocated for qualified principal residences
29 that have never been occupied exceed the limit established in
30 subparagraph (A) of paragraph (1), the Franchise Tax Board shall
31 establish a wait list for subsequently received certifications or
32 reservations, with an order of priority based on the date certification
33 or reservation was received by the Franchise Tax Board. The
34 Franchise Tax Board shall notify taxpayers on the wait list no later
35 than December 31, 2011, as to whether they have been allocated
36 a credit and the amount allocated.

37 (3) In the case where a taxpayer is both a first-time home buyer,
38 as described in paragraph (2) of subdivision (b), and the purchaser
39 of a qualified principal residence that has never been occupied,
40 the Franchise Tax Board shall allocate that taxpayer their credit

1 amount from the one hundred million dollars (\$100,000,000) for
2 qualified principal residences that have never been occupied.

3 (g) (1) Upon receipt of the information described in subdivision
4 (c), the Franchise Tax Board shall allocate the credit to the taxpayer
5 on a first-come, first-served basis.

6 (2) (A) Except as provided in subparagraph (B), the taxpayer
7 shall claim the credit on a timely filed original return.

8 (B) Taxpayers on the wait list, as described in paragraph (2) of
9 subdivision (f), that are allocated a credit for a qualified principal
10 residence that was purchased in the 2010 taxable year may claim
11 the credit on an amended income tax return for that taxable year.

12 (3) The date the information described in subdivision (c) is
13 received shall be determined by the Franchise Tax Board.

14 (4) (A) The determinations of the Franchise Tax Board with
15 respect to the date the information described in subdivision (c) is
16 received, the allocation and reservation of credit, and whether a
17 return has been timely filed for purposes of this subdivision, may
18 not be reviewed in any administrative or judicial proceeding.

19 (B) Any disallowance of a credit claimed due to a determination
20 under this subdivision, including the application of the limitation
21 specified in subdivision (f), shall be treated as a mathematical error
22 appearing on the return. Any amount of tax resulting from that
23 disallowance may be assessed by the Franchise Tax Board in the
24 same manner as provided by Section 19051.

25 (h) The Franchise Tax Board may prescribe rules, guidelines,
26 or procedures necessary or appropriate to carry out the purposes
27 of this section, including any guidelines regarding the allocation
28 of the credit allowed under this section. Chapter 3.5 (commencing
29 with Section 11340) of Part 1 of Division 3 of Title 2 of the
30 Government Code does not apply to any rule, guideline, or
31 procedure prescribed by the Franchise Tax Board pursuant to this
32 section.

33 (i) The credit allowed by this section is not a business credit
34 within the meaning of Section 17039.2.

35 (j) No credit shall be allowed under this section if any of the
36 following apply:

37 (1) The taxpayer was allowed a credit under Section 17059.

38 (2) The taxpayer is not 18 years of age or older as of the date
39 of purchase. A taxpayer who is married at the date of purchase

1 shall be considered to be 18 years of age if the spouse of the
2 taxpayer is 18 years of age or older on the date of purchase.

3 (3) The taxpayer or the taxpayer's spouse, if the taxpayer is
4 married, is related to the seller within the meaning of Section 267
5 of the Internal Revenue Code, related to losses, expenses, and
6 interest with respect to transactions between related taxpayers.

7 (4) The taxpayer qualifies as a dependent, as defined in Section
8 17056, of any other taxpayer for the taxable year of the purchase.

9 (k) This section shall remain in effect only until December 1,
10 2014, and as of that date is repealed.

11 SEC. 2. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.

20 SEC. 3. This act provides for a tax levy within the meaning of
21 Article IV of the Constitution and shall go into immediate effect.